

Railroad Use Only
 NS File No. 1159028
 NCRR File No. o_h-053+4063
 AC:

PIPELINE AGREEMENT

THIS AGREEMENT, made and entered into by and between NORTH CAROLINA RAILROAD COMPANY, a North Carolina corporation, hereinafter styled "Company"; and CITY OF DURHAM, a North Carolina government entity, hereinafter styled "Licensee"; and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter styled "NSR";

WITNESSETH

WHEREAS, Licensee proposes to install, maintain, operate and remove the following:

- A 6-inch ductile iron water pipeline, north of the tracks, under the right of way or property of Company, at Milepost H-053 plus 4,063 feet, Valuation Station 2741 plus 69 (Exhibit A1);
- A 12-inch ductile iron water pipeline, north of the tracks, under the right of way or property of Company, at Milepost H-053 plus 4,532 feet, Valuation Station 2746 plus 38 (Exhibit A1);
- A 12-inch ductile iron water pipeline, north of the tracks, under the right of way or property of Company, at Milepost H-054 plus 876 feet, Valuation Station 2763 plus 55 (Exhibit A2);

at or near Durham, Durham County, North Carolina, to be located with any ancillary appurtenances as shown on print of Drawing marked Exhibits A1 and A2 dated July 8, 2011, attached hereto and made a part hereof (hereinafter called "Facilities");

WHEREAS, Company is willing to permit this proposed pipeline, but only upon the following terms and conditions;

NOW, THEREFORE, for and in consideration of the premises, payment of an initial fee by Licensee to NSR of TWO HUNDRED AND NO/100 DOLLARS (\$200.00), and also a one-time non-refundable fee to Company of FIVE THOUSAND THREE HUNDRED THIRTY-EIGHT AND 08/100 DOLLARS (\$5,338.08) and of the covenants hereinafter made, Company hereby permits and grants Licensee, insofar as Company has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which Company's title may be subject, the right to use and to occupy so much of Company's property as may be necessary for the Facilities, upon the following terms and conditions:

1. Licensee will construct and maintain the Facilities, at its expense, in such a manner as will not interfere with the operations of Company or endanger persons or property of Company, and in accordance with (a) plans and specifications (if any) shown on said print(s) and any other specifications prescribed by Company, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American Railway Engineering Association when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.
2. Licensee hereby agrees to indemnify and save harmless Company, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including

attorney's fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises in any manner from the installation, maintenance, operation, presence or removal or the failure to properly install, maintain, operate or remove the Facilities, unless such losses, damages or injuries shall be caused solely by the negligence of Company. The indemnity contained herein is intended to survive the termination of this Agreement.

3. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from Licensee's permitted operations or uses of Company's property pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install the Facilities. Licensee agrees to indemnify and hold harmless Company from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities. It is agreed that this indemnity provision extends to any cleanup costs related to Licensee's activities upon Company's property and to any costs related to cleanup of the Facilities or to other property caused by the use of the Facilities. The indemnity contained herein is intended to survive the termination of this Agreement.

4. No work of any character shall be started on the property until Certificates of Insurance, specifying that the policies have been furnished and accepted by Company as evidence that Licensee, Contractor, and Subcontractor maintain the following insurance coverages:

(a) Comprehensive General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorney's fees, arising out of bodily injury, liability and property damage liability during the policy period. Such policy shall be endorsed to name Company as an additional insured and shall include a severability of interests provision. In addition, Licensee's policy shall be endorsed to reflect Contractual Liability Insurance specifically relating to the indemnity provisions of this agreement. Any exclusion for construction or demolition activities (including installing wells or bore holes, but not for work done by means of a hand augur) conducted within 50 feet of railroad tracks shall be deleted from Licensee's policy.

(b) In the event Licensee cannot obtain contractual liability insurance to cover the obligations assumed under this Pipeline Agreement, Licensee or its contractor shall procure and furnish to Company a Railroad Protective Liability Insurance Policy having a combined single limit of \$2,000,000 per occurrence and \$6,000,000 aggregate. Said policy shall name Company as the named insured.

(c) Workers' Compensation Insurance in satisfaction of statutory requirements of the state where the property covered by this agreement is located. Also, Employers' Liability Insurance having limits of not less than \$500,000 each accident, \$500,000 per disease - policy limit, and \$500,000 per disease - each employee.

(d) Automobile Liability Insurance having a combined single limit of not less than \$500,000 per occurrence. Said policy shall name Company as an additional insured and shall include a severability of interests provision.

(e) The insurance required herein shall be of such form and content as may be acceptable to Company. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to Company at Property Department, North Carolina Railroad Company, 2809 Highwoods Blvd, Suite 100, Raleigh, NC 27604-1000 (or such other current address provided to Licensee) and approved by Company prior to Licensee's entry on the Premises. The insurance required herein shall not limit the liability assumed by Licensee under this Agreement or consent.

5. The details of the Facilities to be installed and maintained shall be at the option of Licensee, and subject to the approval of Company. In case of failure of Licensee to do the work as herein specified, Company reserves the right to remove the Facilities from Company's premises at the expense of Licensee, and to terminate this Agreement upon ten (10) days' written notice.

6. If Company shall make any change or addition on its right of way at or near the Facilities of Licensee affecting the character, height or alignment of any of Company's power lines, communication, signal or other wires or electrical apparatus, or shall place structures or additional wires or electrical apparatus upon its said right of way, or shall make on its said right of way any change to any line, grade, track, roadbed, installations, works or structures or in the use of any such line, grade, track, roadbed, installations, works or structure, which would be affected by the Facilities of Licensee or by the use thereof, Licensee shall within thirty (30) days of written notice from the Company to Licensee, at Licensee's sole cost and expense, make such changes in the location and character of the Facilities as, in the opinion of Company, shall be necessary or appropriate on account of any such changes or additions.

7. Licensee will notify Company prior to the installation and placing in service of cathodic protection in order that tests may be conducted on Company's signal, communications and other electronic systems for possible interference. If the Facilities cause degradation of the signal, communications or other electronic facilities of Company, Licensee, at its expense, will relocate the cathodic protection and/or modify the Facilities to the satisfaction of Company so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactances or other corrective measures deemed necessary by Company. This provision applies to the existing signal, communications and electronic equipment of Company and to any signal, communications or electronic equipment that Company may install in the future.

8. If Licensee fails to take any corrective measures requested by Company in a timely manner or if an emergency situation is presented which, in the Company's judgment, requires immediate repairs to the facilities, Company, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable and Licensee shall reimburse Company upon receipt of an invoice.

9. Notwithstanding any other provision of this Agreement, it is understood, agreed and covenanted that Licensee accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described caused by any defects therein or business conducted thereon, whether caused by the negligence of Company, its officers, agents or employees, or otherwise, and Licensee hereby indemnifies Company, its officers, agents, and employees, from and against any such liability for said damage. The indemnity contained herein is intended to survive the termination of this Agreement.

10. Company shall furnish, at the cost of Licensee, labor and materials to support its tracks and to protect its traffic during the installation, maintenance, repair, renewal or removal of the Facilities.

11. It is further agreed between the parties that the premises shall be used by Licensee only for the Facilities and for no other purpose without the written permission of the chief engineering officer of Company.

12. Licensee shall give Company seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed on the premises of Company. Licensee agrees to pay any costs incurred by Company for the purpose of protection and inspection considered necessary by Company during installation, maintenance, operation, modification, replacement and/or removal of the Facilities. Such costs shall be paid upon the Company's submission of an invoice to Licensee.

13. Licensee shall not assign this Agreement without the written consent of Company which consent may be withheld in Company's sole discretion.

14. The word "Company" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Company. Said term also shall include Company's officers, agents and employees, and any parent company, subsidiary or affiliate of Company and their officers, agents and employees.

15. This Agreement may be terminated by either party upon sixty (60) days written notice to the other party. During said sixty (60) day period, Licensee shall remove the Facilities from Company's premises and restore said premises to a condition satisfactory to Company's chief engineering officer. If Licensee fails to remove the Facilities within the aforesaid sixty day period, Company may elect: (a) to become the owner of the Facilities without any claim or consideration whatsoever therefor by or to Licensee, its successors or assigns, or (b) to remove the Facilities and all property of Licensee from the premises of Company at the expense of Licensee. Licensee agrees to reimburse Company for any and all costs of such removal upon receipt of an invoice. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

16. This Agreement shall take effect as of the _____ day of _____, 20____.

17. The terms set forth in the attached **Exhibit B**, consisting of two pages and titled "Agreement and Consent of Norfolk Southern Railway Company," are incorporated into this Agreement as if set forth verbatim herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, each part being an original, as of the _____ day of _____, 20____.

COMPANY:

NORTH CAROLINA RAILROAD COMPANY

By: _____

Title: _____

LICENSEE:

CITY OF DURHAM

By: _____

Title: _____

NSR:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Title: _____

**ELECTRONIC ROUTING APPROVAL FORM
FOR CONTRACTS TO BE EXECUTED WITH INK AND PAPER
(THIS IS NOT A CONTRACT DOCUMENT)**

[Use this form when the City Manager or a designee is to sign a contract with pen and ink on paper and you need to track the document through the Onbase contracting system before obtaining the required ink signatures.

Here's what to do:

- 1. When ready to scan the paper contract to be executed with ink pen, print out this tracking form on a single page and make it the LAST page of your scanned contract document. Indicate for the approvers that his/her "electronic signature" should be place on THIS tracking form page and NOT the formal signature page requiring the ink pen signatures.*
- 2. After the contract has been fully approved within Onbase and the electronic "approval" signatures have been provided below by (a) the Finance Officer, (b) City Manager (or designee), and (c) the City Clerk, you may begin to circulate at least 2 original hard-copy contract(s) for final ink pen signatures and acknowledgement.*

– Fred Lamar 10-07-2010]

ONBASE CONTRACTING NO: _____

CONTRACT NAME: _____

**The following electronic signatures are required for authorization of
final ink pen signatures for hard-copy original contracts:**

ATTEST:

CITY OF DURHAM

_____ By: _____

preaudit certificate, if applicable _____



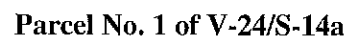


EXHIBIT B**AGREEMENT AND CONSENT OF NORFOLK SOUTHERN
RAILWAY COMPANY**

WHEREAS, Company, Licensee, and NSR desire to enter into the attached Agreement regarding the property described therein (the "Premises").

NOW THEREFORE, in consideration of the above recitals and the promises and agreements contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NSR, Company, and Licensee agree as follows:

1. NSR gives its consent to the Agreement pursuant to the terms and conditions of this Consent. All of the terms of this Consent are hereby incorporated by reference into the Agreement. The term "NSR" as used in this Agreement and Consent and as used in the Agreement shall include NSR's officers, agents and employees, and any parent company, subsidiary or affiliate of NSR and their officers, agents and employees.
2. The parties agree and understand that any right or claim of Company held in or by virtue of the Agreement shall also inure to the benefit of, and be enforceable by NSR or by any successor or assignee of Company or NSR, and NSR shall not be responsible for any obligations, duties or indemnities of Company to Licensee under the Agreement. NSR reserves any pre-existing rights, claims and defenses against Company and Licensee and said rights, claims and defenses shall not be waived or limited in any way by the Agreement.
3. Licensee understands that NSR makes no warranties or representations regarding the condition of or title to the Premises. Licensee takes the Premises "AS IS" and expressly waives any and all claims against NSR relating to or arising from the condition of or title to the Premises and the property surrounding the Premises, including without limitation, any claims and costs relating to environmental contamination under any applicable laws (such as, without limitation, those which might arise under CERCLA, RCRA, and the North Carolina Oil Pollution and Hazardous Substances Act).
4. Without the written consent of NSR, (i) neither the Agreement nor this Consent may be assigned in whole or in part by Company or Licensee; (ii) Licensee shall not enter into any sublicense or sublease of the Premises; and (iii) the Agreement shall not be amended by Company or Licensee. No consent by NSR to any sublease, sublicense, assignment, or amendment of the Agreement shall be construed to be consent to any further sublease, sublicense, assignment, or amendment of the Agreement.
5. In consideration of the rights granted by NSR to Licensee by this Consent, Licensee agrees to indemnify and hold NSR harmless to the same extent as Company is indemnified and held harmless pursuant to the Agreement. In addition, without limiting the indemnities provided in the Agreement, Licensee specifically shall indemnify and hold harmless NSR from and against any and all attorney's fees, costs, expenses, liabilities, injuries, claims (including third party claims and any claims under any environmental laws and regulations such as CERCLA, RCRA, and the North Carolina Oil Pollution and Hazardous Substances Control Act) and damages arising from or related to (1) the Agreement; (2) any acts or omissions by Licensee at or near the Premises, (3) Licensee's violations of environmental laws and regulations, and (4) environmental contamination caused by Licensee. For purposes of this paragraph, the term Licensee shall mean its officers, employees, agents, contractors, guests or invitees.
6. NSR must be given at least thirty (30) days notice prior to the placement of any equipment, structure, facility, fixture, or other improvement on the Premises other than those permitted by the Agreement.

7. Company and NSR agree that, by entering into this Consent, (i) NSR is not making any admission regarding any matter between NSR and Company; (ii) Company is not making any admission regarding any matter between NSR and Company; (iii) NSR is not waiving any claim or defense against Company or any affiliate of Company; (iv) Company is not waiving any claim or defense against NSR; (v) NSR does not waive or prejudice any position, claim or defense with regard to any legal or administrative proceedings in which Company or its affiliates and NSR are currently involved or may become involved, including but not limited to any claim or defense with respect to any leasehold rights, environmental obligation or liability, possessory rights, or holdover or non-holdover status of Company; and (vi) Company does not waive or prejudice any position, claim or defense with regard to any legal or administrative proceedings in which Company or its affiliates and NSR are currently involved or may be involved, including but not limited to any claim or defense with respect to any leasehold rights, environmental obligation or liability, possessory rights, or holdover or non-holdover status of Company.
8. Licensee acknowledges that NSR has not made any inspection of the Premises and that the Premises are located at or near active or inactive railroad facilities, structures, or related property.
9. No work of any character shall be started on the property until Certificates of Insurance, specifying that the policies have been furnished and accepted by NSR as evidence that Licensee, Contractor, and Subcontractor maintain the following insurance coverages:
 - (a) Comprehensive General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorney's fees, arising out of bodily injury, liability and property damage liability during the policy period. Such policy shall be endorsed to name NSR as an additional insured and shall include a severability of interests provision. In addition, Licensee's policy shall be endorsed to reflect Contractual Liability Insurance specifically relating to the indemnity provisions of this agreement. Any exclusion for construction or demolition activities (including installing wells or bore holes, but not for work done by means of a hand augur) conducted within 50 feet of railroad tracks shall be deleted from Licensee's policy.
 - (b) In the event Licensee cannot obtain contractual liability insurance to cover the obligations assumed under this Pipeline Agreement, Licensee or its contractor shall procure and furnish to NSR a Railroad Protective Liability Insurance Policy having a combined single limit of \$2,000,000 per occurrence and \$6,000,000 aggregate. Said policy shall name NSR as the named insured.
 - (c) Workers' Compensation Insurance in satisfaction of statutory requirements of the state where the property covered by this agreement is located. Also, Employers' Liability Insurance having limits of not less than \$500,000 each accident, \$500,000 per disease - policy limit, and \$500,000 per disease - each employee.
 - (d) Automobile Liability Insurance having a combined single limit of not less than \$500,000 per occurrence. Said policy shall name NSR as an additional insured and shall include a severability of interests provision.
 - (e) The insurance required herein shall be of such form and content as may be acceptable to NSR. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to NSR at NSR Risk Manager, Three Commercial Place, Norfolk, VA 23510 (or such other current address provided to Licensee) and approved by NSR prior to Licensee's entry on the Premises. The insurance required herein shall not limit the liability assumed by Licensee under this Consent or the Agreement.